



21 SEP 2004

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In re Application of MANGELINCK	:	
U.S. Application No.: 10/707,968	:	
PCT Application No.: PCT/SG02/00174	:	DECISION
Int. Filing Date: 31 July 2002	:	
Priority Date Claimed: 31 July 2001	:	
Attorney Docket No.: ASTAP2004-01	:	
For: GATE ELECTRODES AND THE	:	
FORMATION THEREOF	:	

This is in response to applicant's "Renewed Petition Under 37 CFR 1.182" filed 16 September 2004.

BACKGROUND

On 31 July 2002, applicant filed international application PCT/SG02/00174, which claimed priority of an earlier Singapore application filed 31 July 2001. A copy of the international application was communicated to the USPTO from the International Bureau on 13 February 2003. The thirty-month period for paying the basic national fee in the United States expired on 31 January 2004.

On 29 January 2004, applicant filed application papers in the USPTO via the Electronic Filing System (EFS).

On 26 May 2004, applicant filed a petition under 37 CFR 1.182.

On 25 June 2004, this Office mailed a decision dismissing the 26 May 2004 petition.

On 16 September 2004, applicant filed the present renewed petition under 37 CFR 1.182.

DISCUSSION

The renewed petition states that the 29 January 2004 filing was intended to be a national stage application under 35 U.S.C. 371 and that the EFS software allows an applicant to specify the electronically filed application as a national state application under 35 U.S.C. 371. However, as stated in the decision mailed 25 June 2004, it is not yet possible to file a national stage application under 35 U.S.C. 371 via EFS.

The information on the USPTO's internet site states,

At this time EFS does not provi[d]e all the capabilities needed to author, submit and initially process electronic documents and attachments required for a complete 35 U.S.C. 371 National stage filing. A future release of EFS software will provide the software capabilities needed to author and electronically submit a National stage application via the Internet to the USPTO. An application enters the national stage process from an international application after compliance with 35 USC 371. See <http://www.uspto.gov/ebs/efs/faq/whattype.htm>.

The "Continuity Data" screen shot submitted with the petition demonstrates that the EFS software allows applicant to file a continuation of a 35 U.S.C. 371 application. However, as discussed above, the USPTO does not currently accept 35 U.S.C. 371 applications via EFS.

Furthermore, as discussed in the decision mailed 25 June 2004, U.S. statutes and regulations do not make specific provision for the requested conversion and as such the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (e.g., the loss of patent rights) where no other remedy is available. In the present case, the renewed petition states that failure to grant the petition would cause the application to lose its priority date, which would result in a loss of patent rights. However, applicant has the ability make the current 35 U.S.C. 111(a) application a continuation of the international application, which would cause no loss of patent rights. See MPEP 1895.01, Section II. Since, such remedy is available to applicant, grant of the renewed petition is not indicated.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.182 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.182".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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